

alternative, requests that summary judgment enter in its favor. Because the United States has included matters outside the pleadings, I will treat its motion as one for summary judgment.²

Discussion

Akrong has failed to file an opposition to the United States' motion for summary judgment and therefore, the Court accepts the United States' statement of material facts as true.³ *See Ferreira v. Mortgage Electronic Registration Systems, Inc.*, 794 F.Supp.2d 297 (D.Mass. 2011)(denying plaintiff's motion to file late opposition to motion for summary judgment; as a result of no opposition having been filed, defendant's statement of material facts is treated as uncontroverted). Taking those facts in a light most favorable to Akrong, I find that there is no genuine issue of material fact regarding the characterization of his separation from service by the United States Navy. Therefore, for the reasons set forth in the United States' supporting memorandum, I find that the United States is entitled to summary judgment, as a matter of law.

Conclusion

Respondent's Motion To Dismiss Or, In The Alternative, For Summary Judgment (Docket No. 11) is ***allowed***. Judgment shall enter for the Defendant.

/s/ Timothy S. Hillman
TIMOTHY S. HILLMAN
UNITED STATES DISTRICT JUDGE

² Where a defendant styles its pleading as one for dismissal or summary judgment and submits a statement of material facts in support, the plaintiff is on notice that the Court might treat the motion as one for summary judgment. Under such circumstances, the plaintiff has constructive notice that the Court may treat the motion as one for summary judgment and therefore, no further notice to the plaintiff is necessary should the Court choose to do so. *Cf. Santoni v. Potter*, 222 F.Supp.2d 14, 17-18 (1st Cir. 2002).

³ Plaintiff's opposition to the United States' motion for summary judgment was required to be filed within twenty-one (21) days. *See* LR,D.Mass 56.1. Furthermore, Local Rule 56.1 provides that:

Material facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties.